

Senate File 116 - Introduced

SENATE FILE 116

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A BILL FOR

1 An Act relating to wage payment collection issues arising
2 between employers and individuals who provide services to
3 employers, providing penalties and remedies, and including
4 effective date provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 91A.2, subsection 6, Code 2011, is
2 amended to read as follows:

3 6. "*Liquidated damages*" means the sum of five percent
4 multiplied by the amount of any wages that were not paid or of
5 any authorized expenses that were not reimbursed on a regular
6 payday or on another day pursuant to section 91A.3 multiplied
7 by the total number of days, excluding Sundays, legal holidays,
8 and the first seven days after the regular payday on which
9 wages were not paid or expenses were not reimbursed. However,
10 such sum shall not exceed twice the amount of the unpaid wages
11 ~~and shall not accumulate when an employer is subject to a~~
12 ~~petition filed in bankruptcy.~~

13 Sec. 2. Section 91A.5, subsection 1, unnumbered paragraph
14 1, Code 2011, is amended to read as follows:

15 An employer shall have the burden to establish that a
16 deduction from employee wages is lawful. An employer shall not
17 withhold or divert any portion of an employee's wages unless:

18 Sec. 3. Section 91A.5, subsection 1, paragraph b, Code 2011,
19 is amended to read as follows:

20 b. The employer ~~has~~ obtains advance written authorization
21 from the employee to so deduct for any lawful purpose accruing
22 to the benefit of the employee.

23 Sec. 4. Section 91A.6, subsection 1, Code 2011, is amended
24 to read as follows:

25 1. An employer shall ~~after being notified by the~~
26 ~~commissioner pursuant to subsection 2~~ do the following:

27 a. Notify its employees in writing at the time of hiring
28 what wages and regular paydays are designated by the employer.

29 b. Notify its employees in writing whose wages are
30 determined based on a task, piece, mile, or load basis about
31 the method used to calculate wages and when the wages are
32 earned by the employees.

33 ~~b.~~ c. Notify, at least one pay period prior to the
34 initiation of any changes, its employees of any changes in
35 the arrangements specified in this subsection ~~1~~ that reduce

1 wages or alter the regular paydays. The notice shall either
2 be in writing or posted at a place where employee notices are
3 routinely posted.

4 ~~c.~~ d. Make available to its employees upon written request,
5 a written statement enumerating employment agreements and
6 policies with regard to vacation pay, sick leave, reimbursement
7 for expenses, retirement benefits, severance pay, or other
8 comparable matters with respect to wages. Notice of such
9 availability shall be given to each employee in writing or by a
10 notice posted at a place where employee notices are routinely
11 posted.

12 ~~d.~~ e. Establish, maintain, and preserve for three
13 calendar years the payroll records showing the hours worked,
14 wages earned, and deductions made for each employee and
15 any employment agreements entered into between an employer
16 and employee. Failure to do so shall raise a rebuttable
17 presumption that the employer did not pay the required minimum
18 wage under section 91D.1.

19 Sec. 5. Section 91A.6, subsection 2, Code 2011, is amended
20 by striking the subsection.

21 Sec. 6. Section 91A.6, subsection 4, Code 2011, is amended
22 by striking the subsection and inserting in lieu thereof the
23 following:

24 4. a. On each regular payday, the employer shall send to
25 each employee by mail or shall provide at the employee's normal
26 place of employment during normal employment hours a statement
27 showing the wages earned by the employee, the deductions made
28 for the employee, and the following information, as applicable:

29 (1) For each employee paid in whole or in part on an hourly
30 basis, the statement shall show the hours the employee worked.

31 (2) For each employee paid based on a percentage of sales or
32 based on a percentage of revenue generated for the employer,
33 the statement shall include a list of the amount of each sale
34 or the amount of revenue during the pay period.

35 (3) For each employee whose pay is based on the number

1 of miles or loads performed, the statement shall include the
2 applicable number performed during the pay period.

3 **b.** An employer who provides each employee access to view an
4 electronic statement of the employee's earnings and provides
5 the employee free and unrestricted access to a printer to print
6 the employee's statement of earnings, if the employee chooses,
7 is in compliance with this subsection.

8 Sec. 7. Section 91A.8, Code 2011, is amended to read as
9 follows:

10 **91A.8 Damages recoverable by an employee.**

11 When it has been shown that an employer has intentionally
12 failed to pay an employee wages or reimburse expenses pursuant
13 to section 91A.3, whether as the result of a wage dispute or
14 otherwise, the employer shall be liable to the employee for any
15 the unpaid wages or expenses that are so intentionally failed
16 to be paid or reimbursed, plus liquidated damages, court costs,
17 and any attorney's attorney fees incurred in recovering the
18 unpaid wages and determined to have been usual and necessary.
19 ~~In other instances the employer shall be liable only for~~
20 ~~unpaid wages or expenses, court costs and usual and necessary~~
21 ~~attorney's fees incurred in recovering the unpaid wages or~~
22 ~~expenses.~~

23 Sec. 8. Section 91A.10, subsection 5, Code 2011, is amended
24 to read as follows:

25 ~~5. An employer shall not discharge or in any other manner~~
26 ~~discriminate against any employee because the employee has~~
27 ~~filed a complaint, assigned a claim, or brought an action under~~
28 ~~this section or has cooperated in bringing any action against~~
29 ~~an employer.~~

30 5. a. An employer or other person shall not discharge or
31 in any other manner discriminate or retaliate against any of
32 the following:

33 (1) An employee or other person for exercising any right
34 provided under this chapter or any rules adopted pursuant to
35 this chapter.

1 (2) Another employee or person for providing assistance to
2 an employee or providing information regarding the employee or
3 person.

4 (3) Another employee or person for testifying or planning
5 to testify in any investigation or proceeding regarding the
6 employee or person.

7 b. Taking adverse action against an employee or other person
8 within ninety days of an employee's or other person's engaging
9 in any of the activities in paragraph "a" raises a presumption
10 that such action was retaliation, which may be rebutted by
11 evidence that such action was taken for other permissible
12 reasons.

13 c. Any employee may file a complaint with the commissioner
14 alleging discharge, ~~or~~ discrimination, or retaliation within
15 thirty days after such violation occurs. Upon receipt of the
16 complaint, the commissioner shall cause an investigation to be
17 made to the extent deemed appropriate. If the commissioner
18 determines from the investigation that the provisions of this
19 subsection have been violated, the commissioner shall bring
20 an action in the appropriate district court against such
21 person. The district court shall have jurisdiction, for cause
22 shown, to restrain violations of this subsection and order all
23 appropriate relief including rehiring or reinstatement of the
24 employee to the former position with back pay.

25 Sec. 9. Section 91A.10, Code 2011, is amended by adding the
26 following new subsection:

27 NEW SUBSECTION. 6. A civil action to enforce subsection 5
28 may also be maintained in any court of competent jurisdiction
29 by the commissioner or by any party injured by a violation
30 of subsection 5. An employer or other person who retaliates
31 against an employee or other person in violation of subsection
32 5 shall be required to pay the employee or other person
33 an amount set by the commissioner or a court sufficient to
34 compensate the employee or other person and to deter future
35 violations, but not less than one hundred fifty dollars for

1 each day that the violation occurred.

2 Sec. 10. NEW SECTION. 91A.15 **Commissions earned date.**

3 An employer shall not require that a person be a current
4 employee to be paid a commission that the person otherwise
5 earned.

6 Sec. 11. **EFFECTIVE DATE.** This Act takes effect January 1,
7 2012.

8 **EXPLANATION**

9 This bill relates to employers and individuals who perform
10 labor and wage payment collection.

11 Code section 91A.2(6) is amended to limit liquidated damages
12 to twice the amount of unpaid wages rather than the amount of
13 unpaid wages.

14 Code section 91A.5 is amended to provide that the employer
15 has the burden to establish that a deduction from employees'
16 wages is lawful and must obtain written authorization for the
17 deduction from the employee in advance.

18 Code section 91A.6(1) is amended to remove the requirement
19 that an employer be notified by the division of labor services
20 of the department of workforce development before the employer
21 is required to fulfill the requirements in subsection 1
22 relating to employee wage and benefit information. In Code
23 section 91A.6(1)(b), the employer must notify employees in
24 writing whose wages are determined based on a task, piece,
25 mile, or load basis about the method to calculate wages, when
26 wages are earned. Code section 91A.6(1)(e) is amended to
27 establish a rebuttable presumption that an employer did not
28 pay the minimum wage if the employer does not maintain proper
29 payroll records.

30 Current Code section 91A.6(2), setting out certain employer
31 compliance procedures, is stricken.

32 Code section 91A.6(4) is amended so that the employer
33 must send to each employee by mail, or at the place of
34 business during the employee's working hours a statement of
35 the employee's earnings, deductions made, and as applicable

1 the following: for an employee paid hourly, the number of
2 hours worked during the pay period; for an employee paid on a
3 percentage of sales or revenue generated, a list of sales or
4 amount of revenue during the pay period; and for an employee
5 paid based on the number of miles or loads performed, the
6 applicable number performed during the pay period. An employer
7 who provides an electronic statement and gives employees free
8 and unrestricted access to the statement is in compliance with
9 the Code section.

10 In Code section 91A.8, when any specified violation of Code
11 chapter 91A occurs, an employer shall be liable for unpaid
12 wages or expenses plus liquidated damages, court costs, and
13 attorney fees incurred in recovering wages.

14 Code section 91A.10(5), which is the subsection covering
15 retaliatory actions by employers or others, is expanded
16 to cover persons other than employees who act under Code
17 chapter 91A with respect to an employee. A 90-day period is
18 established during which any action against an employee or
19 other person is rebuttably presumed to be retaliatory. New
20 subsection 6 is created in Code section 91A.10 to allow the
21 commissioner or any injured party to maintain a civil action in
22 any court of proper jurisdiction. An employer who retaliates
23 against an employee or other person shall compensate the
24 injured party an amount set by the commissioner or the court,
25 but not less than \$150 for each day of the violation.

26 In new Code section 91A.15, an employer shall not require
27 that an individual be a current employee to be paid an earned
28 commission.

29 The bill takes effect January 1, 2012.